

PT 98-104

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**CHRISTIAN UNION BAPTIST
CHURCH,
APPLICANT**

v.

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE**

Docket No. 98-PT-0064

**Real Estate Exemption
For 1997 Tax Year**

**P.I.N. 195A-196
195A-197**

Winnebago County Parcel

**Robert C. Rymek
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Shawn C. Fulbright on behalf of Christian Union Baptist Church

SYNOPSIS: This proceeding raises the issue of whether Winnebago County Parcel Index Numbers 195A-196 and 195A-197 (hereinafter the “subject property” or “subject parcels”) should be exempt from 1997 property taxes. The applicant is seeking exemption under section 15-40 of the Property Tax Code¹, which exempts “All property used exclusively for religious purposes.” 35 ILCS 200/15-40.

¹ In People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), our supreme court held property tax exemption issues necessarily depend on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1997 real estate taxes. Therefore, the applicable provisions are those in the Property Tax Code (35 ILCS 200/1 *et seq.*).

This controversy arose as follows:

On December 1, 1997, Christian Union Baptist Church (hereinafter the “applicant”) filed a Property Tax Exemption Complaint with the Winnebago County Board of Review (hereinafter the “Board”). The Board reviewed the complaint and concluded that the subject property was being used for church parking and storage. On December 9, 1997, the Board recommended that an exemption be granted for the entire 1997 tax year. On May 14, 1998, the Illinois Department of Revenue (hereinafter the “Department”) denied the exemption concluding that the subject property was not in exempt use. The applicant filed a timely appeal and on November 6, 1998, a formal administrative hearing was held at which evidence was presented. Following a careful review of all the evidence, it is recommended that the subject property be granted a property tax exemption for the entire 1997 tax year.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department’s jurisdiction over this matter and its position that the subject property was not in exempt use in 1997.
2. The applicant is a not for profit corporation which was organized on March 31, 1967. App. Ex. No. 1.
3. The applicant’s church building is located at 1705 Kilburn Avenue in Rockford. Tr. p. 9.
4. On March 7, 1986, the applicant’s church building and the land upon which it is situated were granted an exemption from property taxes for the

1985 tax year. The applicant has maintained that exemption ever since.
App. Ex. 2; Tr. p. 9-10.

5. The subject parcels are located at 1619 and 1633 Kilburn Avenue in Rockford and are within a few hundred feet of the applicant's church building. Dept. Gr. Ex. No. 1; App. Ex. 3.
6. The applicant acquired title to the subject property via a warranty deed dated August 9, 1996. App. Ex. No. 4.
7. The subject property is improved with two buildings which have not been lived in or rented out since the applicant acquired the subject property. Dept. Gr. Ex. No. 1; Tr. p. 21.
8. During 1997, the applicant used the buildings located on the subject property to store church items including items used for church fundraisers and items which are to be donated to the poor. Tr. pp. 14, 17, 21.
9. During 1997, the land portion of the subject property was used for church overflow parking and occasional church fundraisers. Tr. pp. 15-18, 23-25.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption for the subject property for the entire 1997 tax year. In support thereof, I make the following conclusions:

Article IX, section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government

and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, article IX, section 6 does not in and of itself grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill.2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist.1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code, which exempts “All property used exclusively for religious purposes.” 35 ILCS 200/15-40.² In People ex rel. McCullough v. Deutsche Gemeinde, 249 Ill. 132, 136-137 (1911) our supreme court stated that “a religious purpose means a use of such property by a religious society or body of persons as a stated place for public worship, Sunday schools and religious instruction.” However, the court subsequently clarified that statement and noted that it was not intended to be “inclusive of everything that might in the future be regarded as a use for religious purposes but as illustrative of the nature of such use.” People ex rel. Carson v. Muldoon, 306 Ill. 234, 238 (1922).

² The word “exclusively,” when used in tax exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.”

Illinois courts have never set forth an all-inclusive definition or specification of what constitutes a religious purpose. Evangelical Teacher Training Ass'n v. Novak, 118 Ill. App. 3d 21 (2nd Dist. 1983). However, the uses to which the applicant puts the subject property (church fundraising, church storage, and church parking), have consistently been recognized as uses justifying exemption. See, *e.g.* Our Savior Lutheran Church v. Department of Revenue, 204 Ill. App. 3d 1055, 1057 (5th Dist. 1990) (property used for church storage and church fundraisers exempt); Northwestern Memorial Foundation v. Johnson, 141 Ill. App. 3d 309 (1st Dist. 1986) (parking areas exempt where owned by exempt organization and reasonably necessary to accomplish organization's exempt purposes).

Therefore, for the reasons set forth above, I recommend that Winnebago County Parcel Index Numbers 195A-196 and 195A-197 be exempted from 1997 property taxes.

Date

Robert C. Rymek
Administrative Law Judge

Gas Research Institute v. Dep't of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. & A.M. v. Dep't of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993).